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14	UNITED STATES	S DISTRICT COURT	
15			
16	NORTHERN DISTRICT OF CALIF	ORNIA, SAN FRANCISCO DIVISION	
17	PERFECT 10, INC., a California	Case No.: CV 12-1521 WHA	
18	corporation,	PLAINTIFF PERFECT 10, INC.'S SUPPLEMENTAL MEMORANDUM	
19	Plaintiff,	SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES IN	
20	V.	OPPOSITION TO YANDEX N.V.'S MOTION TO DISMISS FOR LACK	
21	VANDEV N.V. a Nathaulanda limitad	OF PERSONAL JURISDICTION	
22	YANDEX N.V., a Netherlands limited liability company; and DOES 1 through	Date: June 14, 2012	
	100, inclusive,	Time: 8:00 A.M.	
23		Ctrm: 8	
24	Defendants.	Judge: Honorable William Alsup	
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7 8	Bellomo v. Penn. Life Co. 488 F.Supp.744 (S.D.N.Y. 1980)
9	Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd. 508 F.Supp. 1322 (E.D.N.Y. 1981)
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12	Doe v. Unocal Corp. 248 F.3d 915 (9 th Cir. 2001)
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18	In re Musicmaker.com Securities Lit. 2001 WL 3062431 at *9 (C.D. Cal. June, 4, 2001)
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I. INTRODUCTION

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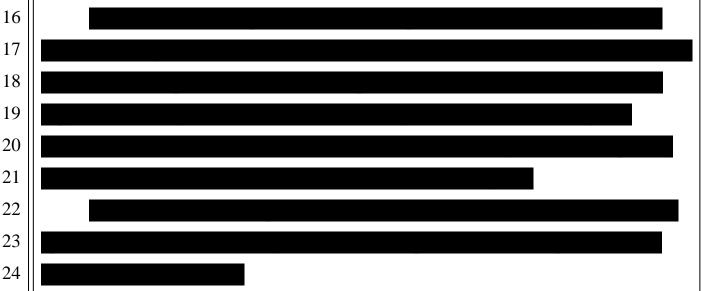
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Perfect 10, Inc. ("Perfect 10") submits this supplemental briefing per the Court's June 11, 2012 Order (Dkt. No. 24) (the "Order."). In the Order, the Court found that jurisdictional discovery was appropriate to determine: (i) the importance of Yandex Inc. to Yandex N.V (Order 6:5-10); (ii) whether Yandex N.V. has the right to exercise control over Yandex Inc. or Yandex LLC (Order 5:26-27; 6:11-14); and (iii) whether the Court's exercise of personal jurisdiction over Yandex N.V. comports with due process to establish nationwide jurisdiction pursuant to Rule 4(k)(2) (Order 9:17).

The Importance Of Yandex Inc.

Discovery has revealed that Yandex Inc. is extraordinarily important to Yandex N.V.'s search engine business.

First Yandex Inc. hosts yandex.com, the English version of Yandex N.V.'s search engine that has infringed Perfect 10's copyrights. This means that the infringing webpages and images that are being offered to users around the world by Yandex.com are being provided from Palo Alto, California.



Fourth, Yandex N.V. used Yandex Inc. to recruit top search engineers from Silicon Valley to work directly on the Yandex search engines.

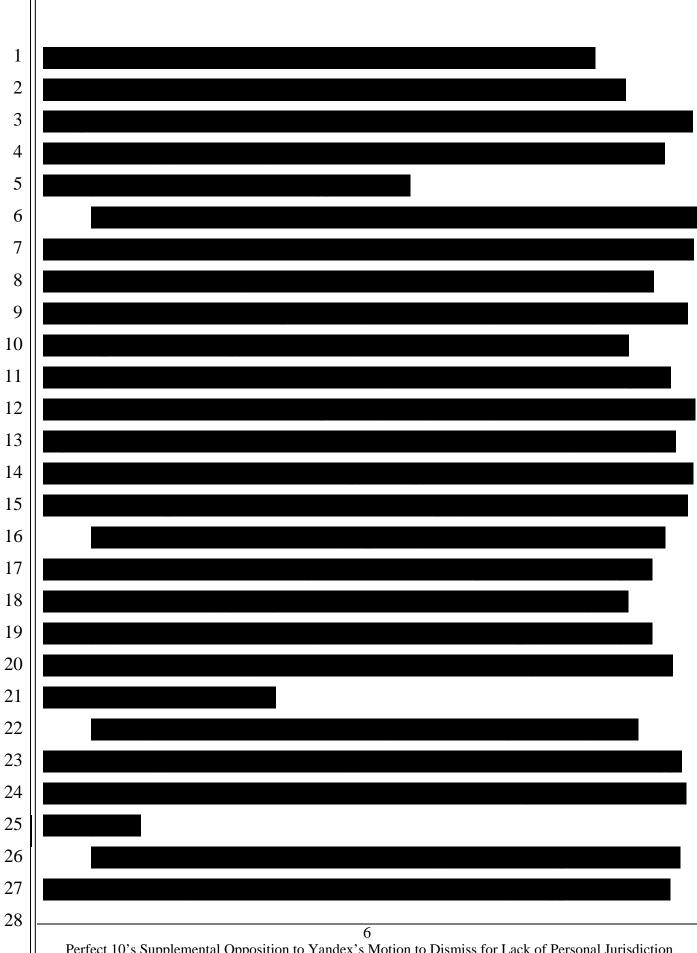
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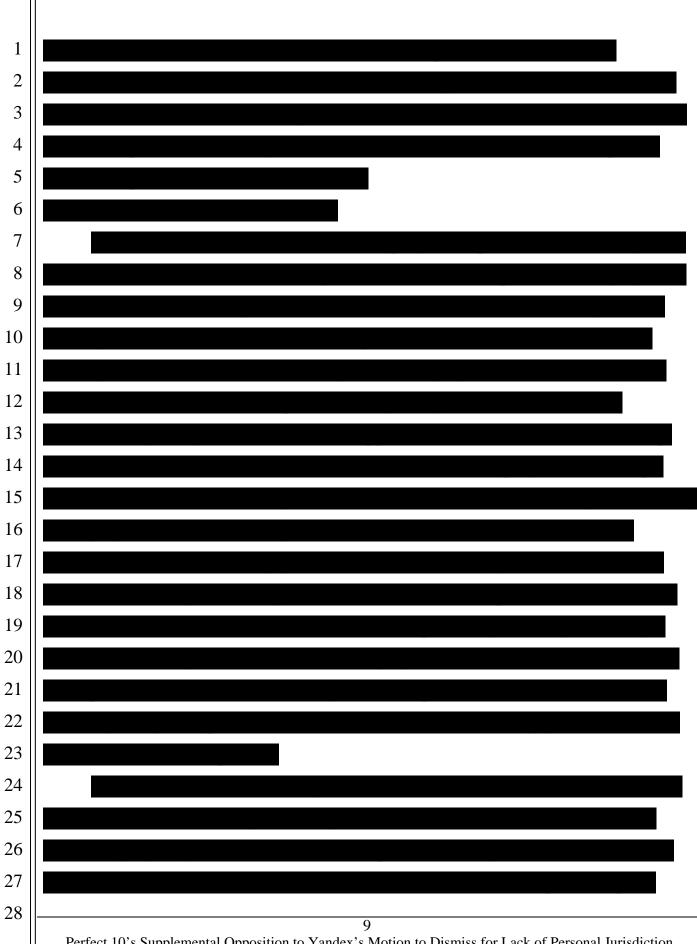
1	contacts with California may be imputed to Yandex N.V. under the agency theory. See
2	Bauman v. DaimlerChrysler Corp., 644 F.3d 909, 921-924 (9th Cir. 2011).
3	Yandex N.V. is Subject to Jurisdiction in the U.S. Pursuant to Rule 4(k)(2)
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8	; its sale of \$401 million in stock
9	through the U.S. NASDAQ stock exchange; and its other contacts detailed in Section
10	II.J below are sufficient to establish F.R.C.P. 4(k)(2) jurisdiction.
11	Perfect 10 respectfully requests that Yandex N.V.'s motion should be denied in
12	its entirety.
13	II. STATEMENT OF RELEVANT FACTS
14	A. Yandex N.V. is in the Search Engine Business
15	Yandex N.V. is a publicly-traded company that describes itself in its SEC filings
16	and in its press releases as a "search engine" company. See Perfect 10's Opposition
17	Brief ("Oppo Brf.") (Dkt. No. 21), 2:10-14; Order at 4:18-22. Yandex N.V.'s website,
18	company.yandex.com, is hosted by Yandex Inc. Supplemental Declaration of Dr.
9	Norman Zada filed herewith ("Zada Suppl. Decl.") ¶7, Exh. 14. Most of Yandex
20	N.V.'s revenues are derived from advertising on its search engines. Oppo. Brf. 4:2-7.
21	Contrary to what Yandex N.V. may argue, it is <i>not</i> a holding company that "invests" in
22	subsidiaries.
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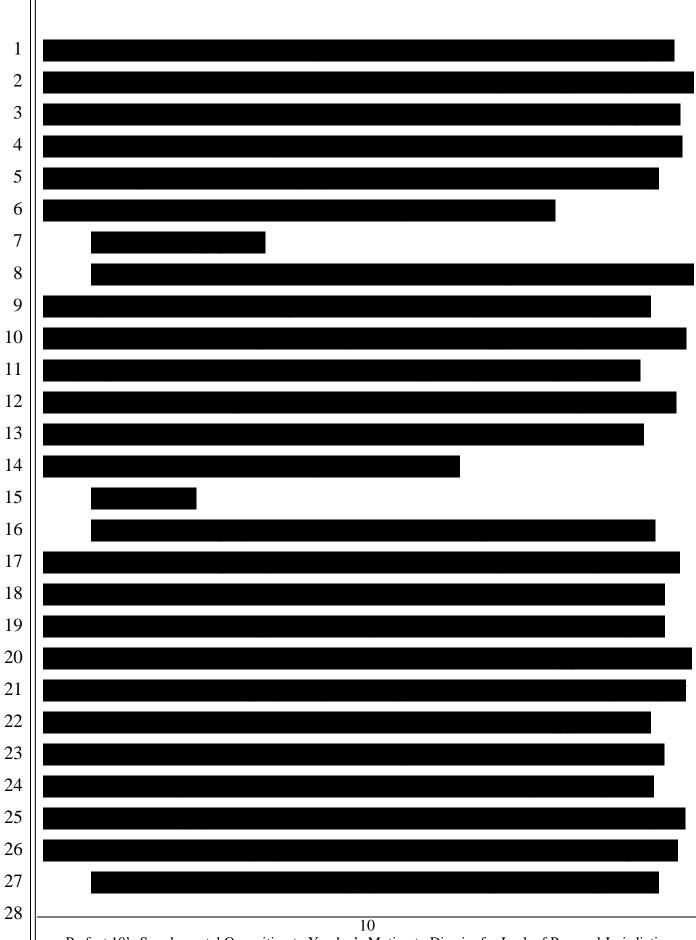
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3	Perfect 10 alleges that Yandex N.V.
4	search engines yandex.com and yandex.ru infringe Perfect 10's copyrights.
5	B. The Creation and Formation of Yandex Labs
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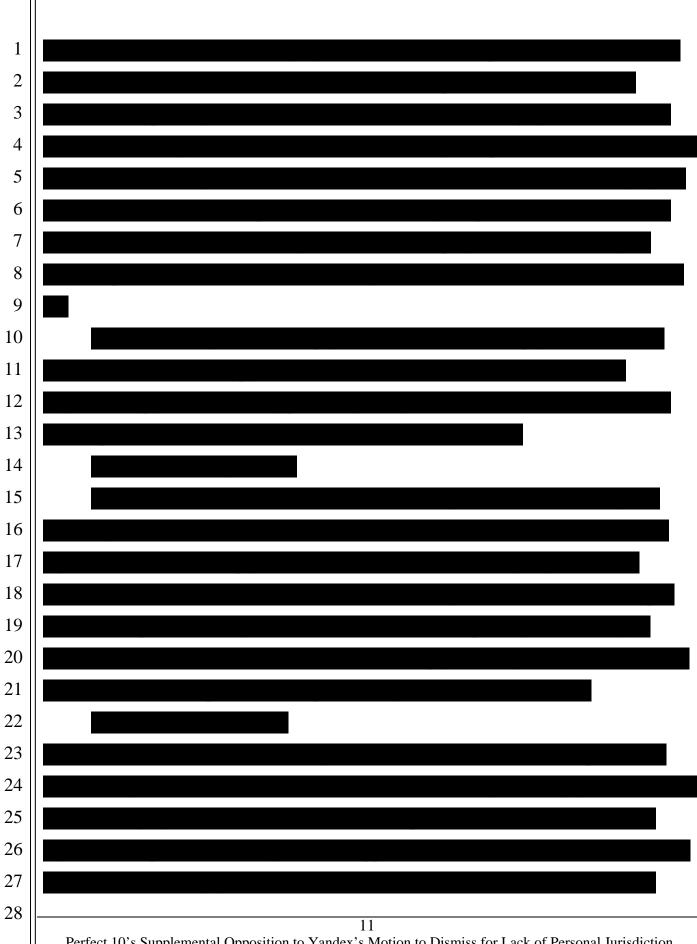
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13	Yandex Inc. does not have its own website. A description of Yandex Labs may
14	be accessed on the Yandex N.V. website, company.yandex.com website, which also
15	publishes Yandex N.V.'s SEC filings, Yandex press releases, corporate information,
16	descriptions of the Yandex management team, and explanations as to how the Yandex
17	search engines and web crawlers operate. Benink Decl., ¶ 16, Exh. GG.
18	C. The Overlap and Close Relationship of Officers and Directors
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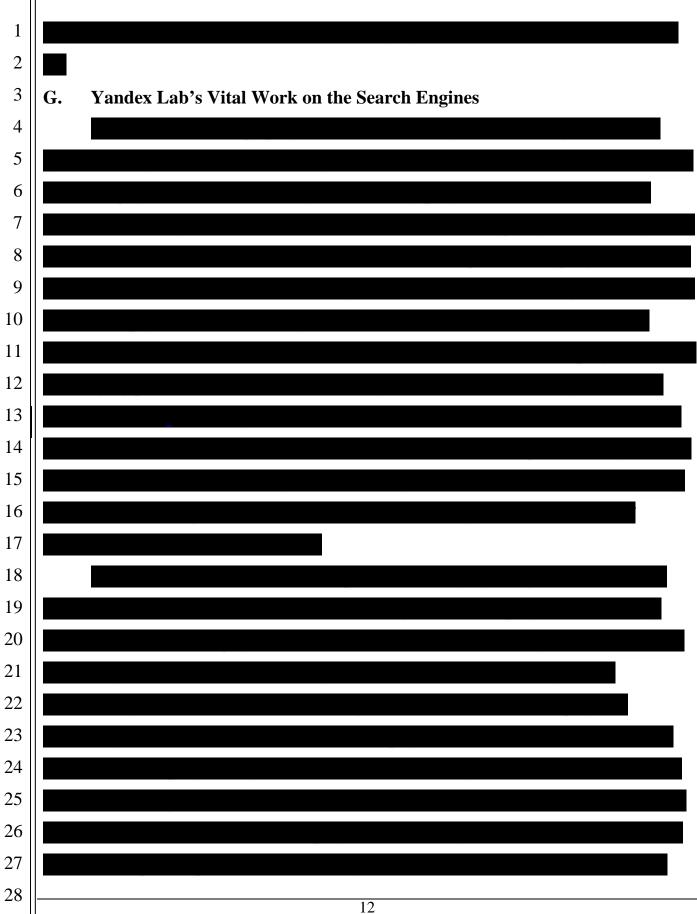


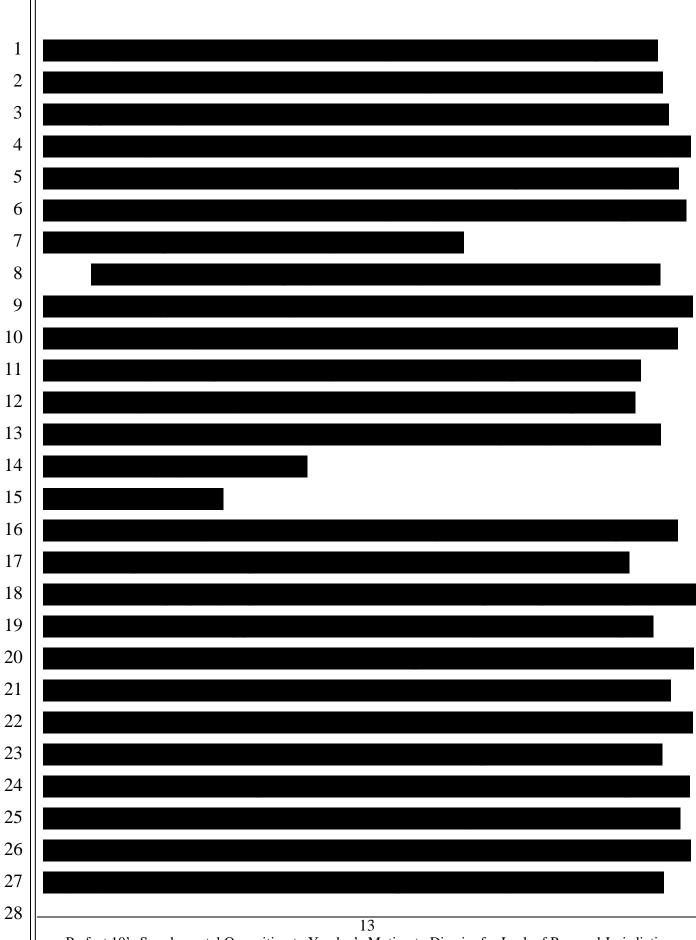
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4	D. Hiring and Firing of Employees and Compensation Packages
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23	E. Yandex Inc. Provides Hosting, Web Crawlers, IP Addresses,
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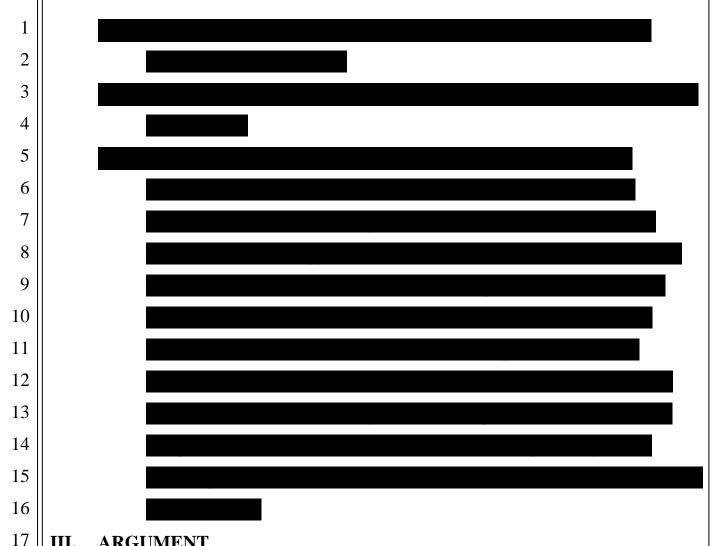












III. **ARGUMENT**

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A. Legal Standards on Agency Test

A foreign parent company may have the necessary contacts by virtue of its relationship to a subsidiary through either the "alter ego" or "agency" theory. Bauman, 644 F.3d at 919. The agency test is satisfied by a showing two things: (1) that the subsidiary performs services that are sufficiently important to the foreign corporation that if it did not have a representative to perform them, the corporation's own officials would undertake to perform substantially similar services, and (2) the parent has a right to control the subsidiary's activities. *Id.* at 919–24. *See also*, Order 5:8-14.

B. Yandex Inc. Performs "Sufficiently Important Services"

The principal focus of the agency test is the importance of the services to the

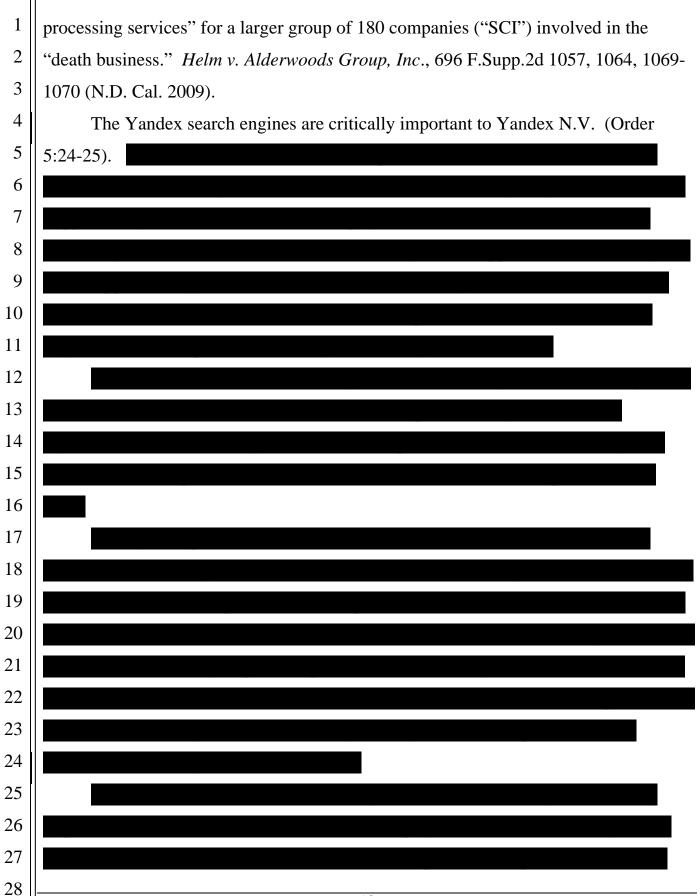
parent. *Bauman*, 644 F.3d at 922. "The purpose of examining sufficient importance is to determine whether the actions of the subsidiary can be understood as a manifestation of the parent's presence." *Id.* at 921. If the parent would undertake the services of the subsidiary if the subsidiary did not exist, then this element is met. *Id.* at 921-922. But this test is met even when those services might be delegated by the parent to another agent or subsidiary. *Id.* at 922, fn. 13. In other words, the test does not ask whether Yandex N.V.'s own officials (represented by a board of directors) would *directly* undertake those services. Here, many of the services Yandex Inc. provides would likely be delegated to Yandex LLC if Yandex Inc. did not exist.

Yandex N.V. argues that "Yandex N.V. is a holding company acting consistent with its role as an investor. . ." (Dkt. 17-1, 7:21-22). The sufficient importance element has been found where a subsidiary was not a true passive holding company in the business of investing in subsidiaries. In *Hydroxycut*, the parent company Kerr was the parent to 50 corporations described together as the Iovate Companies. In analyzing the agency test, the Court rejected Kerr's argument that it was a true holding company and held:

It is clear the one business enterprise has been divided into numerous parts that work together and depend on each other. All of the functions of the subsidiaries are devoted to the common end of developing and selling the Iovate Companies' diet and nutritional supplements.

Hydroxycut, 810 F.Supp.2d. at 1119.

The sufficient importance element has also been found where a subsidiary acted as a distribution channel for vehicles in California that accounted for 2.4% of worldwide sales, *Bauman*, 644 F.3d. at 922; where a subsidiary was used by the parent as an agent to implement strategy and to acquire a controlling stake in a third party, *In re Musicmaker.com Securities Lit.*, 2001 WL 3062431 at *9 (C.D. Cal. June, 4, 2001); and where a subsidiary provided "management, administrative, accounting, and data



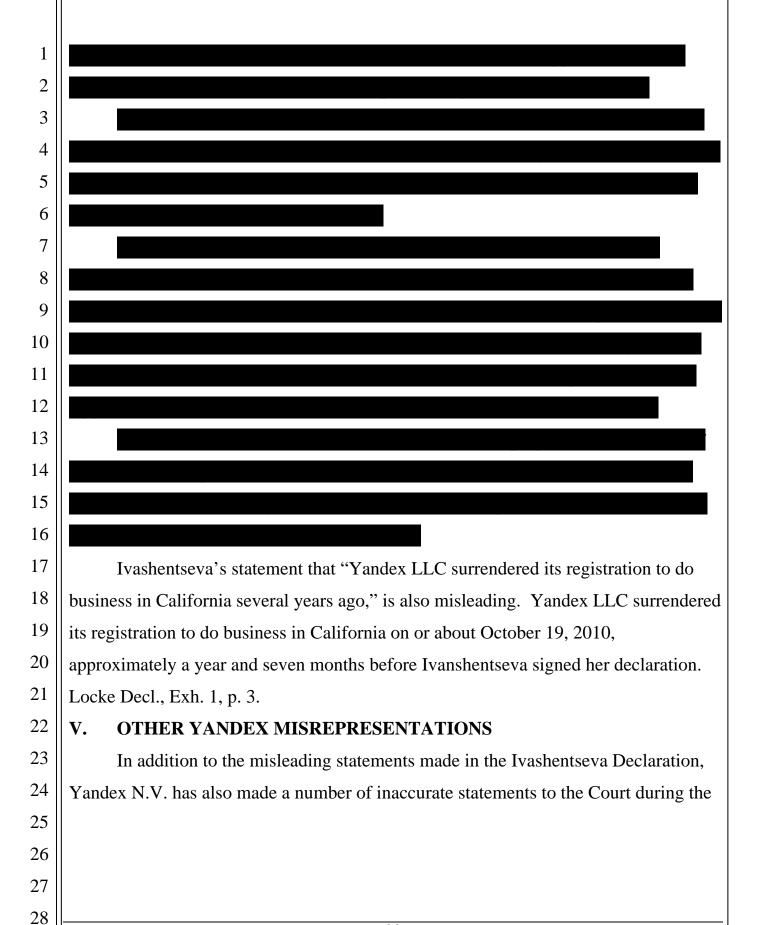
Yandex N.V. is not simply a passive holding company investor. Rather Yandex Inc. is nothing more than an incorporated department of Yandex N.V. whose presence in Palo Alto, California substitutes for the presence of Yandex N.V. *See Doe v. Unocal Corp.*, 248 F.3d 915, 928-929 (9th Cir. 2001); citing *Gallagher v. Mazda Motor of America, Inc.*, 781 F.Supp. 1079, 1083-84 (E.D.Pa.1992); *quoting Bulova Watch Co., Inc. v. K. Hattori & Co., Ltd.*, 508 F.Supp. 1322, 1342 (E.D.N.Y.1981.) If Yandex Inc. did not exist, Yandex N.V. would certainly have this work performed by another agent or subsidiary.

C. Yandex N.V. Controls Yandex Inc.

The control required to establish agency is of a lower standard than that under the alter-ego test. *Bauman*, 644 F.3d. at 922. The Ninth Circuit specifically noted that it is not a requirement that the parent must exercise actual control over the operations of its subsidiary on a day-to-day basis for the agency theory to be established. *Id*. (noting that "this argument is in error because it conflates the agency and alter ego tests"). **Instead, only a right to control must be established.** And as discussed above, the right to control is also the lesser important of the two elements necessary to establish the agency theory.

As explained above, Yandex N.V. Corporate Governance Guidelines provide it with such a right, as Yandex N.V. must approve all material non-ordinary Yandex Inc. transactions. Benink Decl, Exh. 36, p. 81. Yandex N.V. has demonstrated its complete control of Yandex Inc

1	filings. Zada Decl. (Docket 21-1) Exh. 1, p. 1. While listing on a U.S. stock exchange
2	and designation of an agent in the forum state, may not be enough, by itself to establish
3	personal jurisdiction, they may be considered in the mix of contacts that the Court
4	considers. See Bauman v. DaimlerChrysler AG, 2005 WL 3157472 at *8 (N.D. Cal.
5	November 22, 2005) ("Neither is a listing on a stock exchange, without more,
6	sufficient to confer general jurisdiction.") (italics added); Martin v. D-Wave Systems,
7	Inc, 2009 WL 4572742, at *4 (N.D. Cal., December 1, 2009) (considering designation
8	of agent as one of the factors in support of exercise of general jurisdiction).
9	And it would be imminently reasonable for the Court to assert jurisdiction over
10	Yandex N.V.
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17	Yandex N.V. cannot possibly argue that
18	its contacts with the U.S. are random, fortuitous, or attenuated.
19	IV. THE IVASHENSTEVA DECLARATION IS FALSE AND MISLEADING
20	Yandex relied almost exclusively in its motion to dismiss, on the declaration of
21	an outside Yandex N.V. board of director, Elena Ivashentseva. However, her
22	declaration contains a number of false and/or misleading statements.
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VI. **CONCLUSION** Yandex N.V. is not a passive holding company whose only interest is in owning profitable subsidiaries. It operates a family of companies together as a single entity, "Yandex," whose unitary goal is to make its search engines successful. Yandex N.V. uses Yandex Inc. as a base for its operations in the U.S. and to provide critical computer infrastructure for its search engine business. It is imminently fair to hale Yandex N.V. into a California court considering Yandex N.V.'s numerous contacts with California and the U.S. Perfect 10 respectfully requests that this Court deny Yandex N.V.'s motion to dismiss. Respectfully submitted, Dated: August 22, 2012 Krause Kalfayan Benink & Slavens, LLP. /s/ Eric Benink By: Eric Benink Attorney for Plaintiff, Perfect 10, Inc.